

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16382
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

[Redacted] (petitioner) protests the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated March 1, 2002, reducing a claimed refund of income tax and interest from a claimed refund of \$3,495 to \$1,748 for 1996.

The petitioner was married during 1996 and filed a joint Idaho income tax return for that year. He was subsequently divorced. The petitioner incurred a net operating loss in 1998 and filed an amended 1996 return to carry his 1998 net operating loss back to 1996. The amended return purported to offset all of the income and recover all of the tax paid on the 1996 joint return.

The staff of the Tax Commission limited the refund to the petitioner to half of the tax paid on the original 1996 return. This limitation was based upon the presumption that the tax paid was from community funds and that one-half of the tax paid should be attributed to the petitioner's former wife.

The petitioner appealed stating that the limitation was incorrect since the petitioner had paid all of the tax paid on the 1996 return.

Idaho is a community property state. Idaho Code section 32-906 states, in part:

Community property – Income from separate and community property – Conveyance between spouses. – (1) All other property acquired after marriage by either husband or wife is community property. The income of all property, separate or community, is community property unless the conveyance by which it is acquired provides or both spouses, by written agreement specifically so providing, declare that all or specifically designated property and the income from all or the specifically designated property shall be the

separate property of one of the spouses or the income from all or specifically designated separate property be the separate property of the spouse to whom the property belongs. Such property shall be subject to the management of the spouse owning the property and shall not be liable for the debts of the other member of the community.

The Idaho Supreme Court has stated that:

It is true that a presumption exists that property acquired during marriage is community, *Stanger v. Stanger*, 98 Idaho 725, 571 P.2d 1126 (1977); *Simplot v. Simplot*, 96 Idaho 239, 526 P.2d 844 (1974), and that the party asserting the separate nature of such property has the burden of so proving, *Cook v. Cook*, 102 Idaho 651, 637 P.2d 799 (1981).

Eliassen v. Fitzgerald, 105 Idaho 234, 668 P.2d 110 (1983).

In this case, the petitioner has not contended that the income reported on the 1996 return was other than community income. There is no indication of any agreement between the spouses that the income was not community income. The petitioner has not contended that any portion of the income reported on the joint 1996 Idaho income tax return was separate property. Further, the petitioner has not contended the tax paid was from separate funds. He has only contended that he (as opposed to his former wife) made the payment of the tax. Given the presumption under Idaho law in favor of the characterization of community income, the Commission must address this case presuming that both the income reported in 1996 and the tax paid should be characterized as community rather than separate.

Such a situation was addressed by the Internal Revenue Service in Revenue Ruling 75-368, 1975-2 CB 480 which stated, in part:

In the instant case, the net operating loss occurred in 1970, when the taxpayer filed his return as an unmarried individual. The net operating loss deduction for 1967, 1968 and 1971 will be carried back and carried over only to taxpayer's portion of the income shown on his joint returns. The joint tax rates will be applied to the reduced taxable income. The amount of taxpayer's overpayment on

each return will be the excess of tax paid on each return over the recomputed tax for that return, *limited to the amount of tax actually paid by the taxpayer that is attributable to his portion of the taxable income originally reported on the return.* (Italics added.)

The staff has refunded to the petitioner one-half of the tax paid with his joint 1996 Idaho income tax return and interest thereon. The tax refunded reflects the full extent of the tax paid which is, pursuant to the Idaho community property laws, attributable to the petitioner if the tax was paid from community funds. Since the petitioner has not shown that it was paid from separate funds, the Commission must limit the petitioner to the amount he has already received.

WHEREFORE, the Notice of Deficiency Determination dated March 1, 2002, is hereby APPROVED, AFFIRMED, and MADE FINAL.

An explanation of the taxpayer's right to appeal this decision is included with this decision.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2002, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]
[Redacted]

Receipt No. [Redacted]